

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-Cr-63

DANNY L. IVERSON and  
DEBRA M. TIMKO,

Defendants.

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**MAGISTRATE JUDGE'S RECOMMENDATION TO THE  
HONORABLE RUDOLPH T. RANDA**

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On March 31, 2006, a federal grand jury sitting in this district returned a 33-count indictment against the defendants, Debra M. Timko and Danny L. Iverson. The defendants appeared before this court and entered pleas of not guilty to the charges.

Pursuant to the pretrial scheduling order issued at that time, defendant Timko has filed the following pretrial motions: 1) motion to dismiss Counts 14-17 of the indictment (Docket # 32); 2) motion to dismiss Counts 18-21 of the indictment (Docket # 33); 3) motion to dismiss Count 32 of the indictment (Docket # 34); and 4) motion to strike surplusage from the indictment (Docket # 35). The motions to dismiss Counts 14-17 and to dismiss Count 32 will be addressed herein. The remaining motions will be addressed in a separate decision.

**MOTION TO DISMISS COUNTS 14-17**

Defendant Timko moves to dismiss Counts 14-17 of the indictment on the grounds that the limited allegations in the indictment are conclusory and fail to articulate the particulars of the scheme to defraud. She also asserts that these counts fail to sufficiently allege the materiality element of a wire fraud offense.

In its response, the government agrees that Counts 14-17 should be dismissed without prejudice to allow it to seek a superseding indictment that would include an allegation that the defendants' scheme to defraud was accomplished through misrepresentation and concealment of material information by the defendants. See Government's Response to Pretrial Motions [Government's Response] at 8). In light of the foregoing, this court will recommend that defendant Timko's motion to dismiss be granted without prejudice.

### **MOTION TO DISMISS COUNT 32**

Defendant Timko seeks dismissal of Count 32 on the ground that she did not have a statutory duty under 29 U.S.C. §§ 436 and 439(a) to maintain the types of enumerated records of Local 150 of the Service Employees International Union until she assumed the presidency of Local 150 in December 2001. Count 32 charges that "from December 1, 2001, through at least December 31, 2004," defendant Timko wilfully failed to maintain union records in violation of 29 U.S.C. §§ 436 and 439(a). (Indictment, Count 32).

In response, the government points out that "[by] its express terms, . . . Count 32 only seeks to hold Timko responsible for failing to maintain such records during the period from December 1, 2001, through December 31, 2004." (Government's Response at 12). Therefore, the government states that defendant Timko's motion to dismiss this count should be denied.

Based on the government's response, defendant Timko states that the parties apparently are in agreement as to the limited reach of Count 32. (Defendant Timko's Reply to Government's Response to Pretrial Motions at 8). Assuming that she accurately described the government's position, defendant Timko states that she would be prepared to withdraw the motion to dismiss Count 32.

The court has carefully considered the language of the indictment, the government's position with respect to the time period charged in Count 32 and defendant Timko's reply brief. Based on such consideration, the court concludes that Count 32 properly charges defendant Timko with wilfully failing to maintain union records during the time she was president of Local 150 beginning on December 1, 2001, and continuing until December 31, 2004. Accordingly, the court will recommend that defendant Timko's motion to dismiss Count 32 be denied.

### **CONCLUSION**

**NOW, THEREFORE, IT IS HEREBY RECOMMENDED** that the United States district judge enter an order **granting** defendant Timko's motion to dismiss Counts 14-17 without prejudice. (Docket # 32).

**IT IS FURTHER RECOMMENDED** that the United States district judge enter an order **denying** defendant Timko's motion to dismiss Count 32. (Docket # 34).

Your attention is directed to 28 U.S.C. § 636(b)(1)(A) and General Local Rule 72.3 (E.D. Wis.), whereby written objections to any recommendation herein or part thereof may be filed within ten days of service of this order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of your right to appeal.

Dated at Milwaukee, Wisconsin this 10th day of January, 2007.

BY THE COURT:

s/ Patricia J. Gorence  
PATRICIA J. GORENCE  
United States Magistrate Judge